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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/817,054	03/27/2001	Jeffrey Paul Grundvig	20-149	9186

7590 11/07/2006

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EXAMINER

MATAR, AHMAD

ART UNIT PAPER NUMBER

2616

DATE MAILED: 11/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

sf

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/817,054	Applicant(s) GRUNDTVIG ET AL.	
	Examiner Justin M. Philpott	Art Unit 2616	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments are not persuasive.

Applicant argues that "Examiner cannot simply pick elements from Kojima and call them a data frame simply because it is convenient to reject the claimed features" (page 6). Contrary to applicant's assertion, Examiner has not acted in this manner. In response, Examiner first notes that applicant has asserted (both in the Interview of September 22, 2006, and by way of presenting dependent claim 2) that the "data frames" in applicant's claim 1 are not necessarily "TDMA data frames". Moreover, if applicant were to now argue that the "data frames" in claim 1 should be read to be "TDMA data frames" as provided in applicant's specification, applicant would appear to be unable to explain why claim 2, which recites only that the limitation of data frames in claim 1 are "TDMA data frames", continues to be included in the application. Clearly, by presenting both claims 1 and 2, applicant is seeking patent protection for the broadest reasonable interpretation of "data frames" that is not limited to "TDMA data frames".

Thus, since "data frames" in claim 1 are not to be read as "TDMA data frames", and since applicant is seeking patent protection for the broadest reasonable interpretation of "data frames", it is proper for Examiner to give the broadest reasonable interpretation of "data frames" to the limitation of claim 1 for determining patentability over prior art. Additionally, after reviewing applicant's specification and not finding a clear definition of "data frames" other than "TDMA data frames", it is proper for Examiner to turn to sources well known in the art for establishing the well known meaning of "data frame" as used in applicant's claim 1. Accordingly, Examiner turns to IEEE.

Specifically, "IEEE 100: The Authoritative Dictionary of IEEE Standards Terms, Seventh Edition" defines "data frame" as "A grouping of data elements primarily for the purpose of referring to the group with a single name, and thereby efficiently reusing groups of data elements that commonly appear together in a message body specification. This data concept type may, however, be used to specify groups of data elements for other purposes as well". Kojima teaches such a grouping of data elements (e.g., PA, video, audio, and other media as shown in FIG. 4) for referring to the group with a single name (e.g., PA comprising CCR, UW, and CI; video comprising VDT and SWV; audio comprising ADT and SWA; and other media comprising MDT and SWM). Additionally, such configuration of Kojima is used for other purposes such as organizing medium to assure proper processing (e.g., see col. 3, lines 8-67, and col. 4, lines 38-58). Thus, the elements included in FIG. 4 of Kojima meet the well known meaning of "data frame" as defined by IEEE, the well known authority for industry standard terms. Accordingly, Examiner has properly asserted that Kojima teaches "data frames" as broadly recited in applicant's claim 1.

Additionally, applicant argues that applicant's admitted prior art FIG. 5 shows a prior art embodiment that includes a sync word at the beginning of a TDMA frame, implying that Kojima cannot teach applicant's claim 1. However, Kojima clearly teaches sync words coupled with each respective element (video, audio, and other media) except the PA element (see FIG. 4). Thus, Kojima teaches the limitations of claim 1 directed towards sync word placement among the elements.

Finally, applicant argues (pages 6-7) that it is not obvious or well known in the art to shift the location of a sync word to the beginning of all time slot based data frames. However, applicant's admitted prior art FIG. 5 clearly shows that it is well known in the art to place the sync word at the beginning (e.g., see applicant's FIG. 5 with SYNC WORD 520 field preceding fields 1-N). Thus, applicant's argument is not persuasive.


CHI PHAM
SUPERVISORY PATENT EXAMINER 11/03/06